

Comments on March 28, 2013 Zoning Administrator Agenda

Submitted by: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item B. Minutes of March 14, 2013

I noticed one extremely minor grammatical error on page 2, in the last line of the public hearing paragraph: "... it seemed to contradict **with** what the MUP would allow."

Item 1. 718 Poinsettia Avenue Parcel Map (PA2013-008)

In the draft Resolution of Approval:

- Since Fact in Support of Finding F-1 establishes the land is not subject to the Williamson Act, any further facts (such as F-2) appear unnecessary. Similar reasoning suggests fact G-2 is also unnecessary, as is the latter part of fact K-1.
- Regarding Finding I, the reference to California Government Code section 65584 is to the Housing Element of the General Plan, including its affordability goals. It is not entirely clear that consistency with the present zoning, as recited in the supporting fact I-1, is sufficient to demonstrate that this change in use could not be in conflict with the Housing Element, particularly with regard to the affordability of the newly created units.
- The very similar agenda Item 3 includes a required Finding L (*"That public improvements will be required of the Applicant per the Municipal Code and the Subdivision Map Act."*). I am unable to find that as a required finding in Section 19.12.070.A of the Newport Beach Municipal Code, so it is unclear to me why that finding is required to approve Agenda Item 3, but if it is needed there, should it be included in this resolution.
- Why does Condition 3 mention *"Each unit will require separate utilities for the fire sprinklers"*? Do the units not need separate utilities in general, not just for the sprinklers, per Conditions 16 & 17?
- Condition 13, requiring replacement of a street tree, may require review and approval by the Parks, Beaches and Recreation Commission under City Council Policy G-1, or other review authorities. It is not clear if this matter is entirely within the authority of the Zoning Administrator to order. Compare to Condition 17 in Agenda Item 3, where authorization by the Municipal Operations Director is implied.
- In Condition 19, do the units need to be separately identified?
- Is the reference to "duplex" in Condition 26 correct? Fact in Support of Finding A-1 identifies the existing property as a single family residence, not a duplex.
- In Condition 28, I don't believe Newport Beach currently has an employee officially called "Planning Director." Was this intended to read "Director of Community Development"?
- Regarding the Parcel Map, I am probably not understanding it, but if the solid lines represent the two condo units, they appear to have a substantially smaller footprint than the existing single family residence. I have trouble reconciling this with Fact in Support of Finding A-1, which reports that the square footage of development is increasing from 1,355 to 3,347, and also where the required parking will be provided.

Item 2. 309 Goldenrod Avenue Parcel Map (PA2013-009)

In the draft Resolution of Approval:

- The same comments as in the previous item apply to Facts in Support of Finding F-2, G-2, I-1 and the absence of Finding L. The comments on Conditions of Approval 3, 19, 26 and 28 in the previous item also apply to the corresponding conditions here (3, 18, 25 and 27).
- With regard to Finding K, in view of the recent California Supreme Court opinion in *Pacific Palisades Bowl Mobile Estates, LLC v_ City of Los Angeles*, [55 Cal.4th 783](#) (2012), I suspect that consistency with Coastal Act policies can be determined only by application for a Coastal Development Permit. The Court held that for purposes of the Coastal Act, “Any subdivision under the Subdivision Map Act thus is, by definition, a species of change in the density or intensity of use of land and is a “development.” Although certain aspects of the Subdivision Map Act may be inapplicable or streamlined for condo projects creating four and fewer units, the draft Resolution strongly implies the Subdivision Map Act is applicable to this project. In view of this, and since the City is not currently certified to make Coastal Act consistency determinations, I think the Zoning Administrator should endeavor to inform the applicant of whether an application for a Coastal Development Permit is required, and if so, include that as a condition of approval. Since the Coastal Act concerns are likely to be minor, this may well, as the Court observes, result in the issuance of waiver. Nonetheless it would appear the application needs to be made.

Item 3. 429 Orchid Avenue Parcel Map (PA2013-036)

In the draft Resolution of Approval:

- The same comments as in Agenda Item 1 apply to Facts in Support of Finding G-2 and I-1 and to why Finding L is present.
- The comments on Conditions of Approval 19 and 28 in Agenda Item 1 also apply to the corresponding conditions here (26 and 29).
- It is not entirely clear why the Conditions of Approval related to fire sprinklers and smoke detectors that were included in the two previous agenda items, were omitted here. Perhaps because it is already under construction? Might those conditions still be needed in the event of a future reconstruction on the site, or are they merely echoing conditions already imposed by the Municipal Code?
- The consistency of Conditions 17 and 18 with City Council Policy G-1 is not completely obvious. It is possible that further review and approval, for example by the Parks, Beaches and Recreation Commission, may be required for changes in street trees.
- There are a couple of typos in Condition 18: “*The payment of a street tree planting fee/inspection to the City shall be made ~~or~~ for two 36 inch box “Magnolia Grandiflora Cultivars” which shall be planted in place of the two “Eucalyptus” trees.*”
- In Condition 27 does “finaling” a building permit mean certifying that construction was satisfactorily completed? If it means issuing the permit, the statement that “*The building permit for the new construction shall not be finalized until after recordation of the Parcel Map*” is difficult to reconcile with Fact A-1, which says that construction is already taking place.